INFORMATION LETTER

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Venezuela Withdraws Tariff Benefits on Canned Foods

In a supplementary trade agreement with the United States, signed at Caracas on August 28, Venezuela withdrew tariff benefits on canned foods valued at $1.5 million.

The new agreement constitutes a revision of the 1939 trade agreement between the two countries. Under that agreement, in exchange for reciprocal trade benefits in U. S. tariffs, Venezuela has maintained preferential tariff rates on a number of U. S. products, including canned foods.

Although Venezuela has now agreed to continue most of the preferential tariff rates granted in 1939, the Venezuelan tariff classifications for canned foods were rephrased in the new agreement in such a way as to exclude a number of canned foods from the benefits of the preferential duties.

As a result of the new tariff classifications, which were agreed to by a team of government trade specialists representing the United States, the following canned foods will be excluded from the benefits of the preferential tariff rates which have existed since 1939:

Canned pineapple and pineapple juice, canned citrus and citrus juices, catsup and chili sauce, most canned soups, a number of canned vegetables, canned salmon, and canned sardines.

After the new trade agreement becomes effective, these canned foods will be dutiable in Venezuela under her "general" tariff rates, which are considerably higher.

In addition to the withdrawal of trade benefits on these canned foods, valued at $1.5 million in terms of 1950 trade, Venezuela raised her tariff on canned shell fish from the United States.

Last fall, prior to the start of the trade agreement negotiations, the N.C.A. and others in the canning industry filed briefs requesting the United States to seek further tariff concessions on canned foods from Venezuela, which is the industry's largest single foreign market.

The new agreement contains one new concession on canned foods: Vene-

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Wage-Hour Division Defines Canning

The Wage and Hour Division of the Department of Labor on August 29 released a new Statement of General Policy or Interpretation on the subject of the various canning and food processing exemptions under the Fair Labor Standards Act. The views expressed therein will serve to guide the Division in its future enforcement policies. All prior rulings or interpretations by the Division are to be considered superseded or revoked by the new interpretative statement to the extent that they are in conflict.

The exact impact of this new statement of the Division's views on the application of the Fair Labor Standards Act to certain phases of cannery operations must await analysis in the light of particular operating patterns. Certain positions taken by the Division in this statement may be considered controversial.

The first paragraph of the statement (Section 780.50) defines the term "canning" as used in Section 7(c) of the Act (the 14-week unlimited hours exemption for employees of employers

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Reduced Rail Freight Rates

A new tariff (Boin's #164) containing reduced rail freight rates on canned foods within the Official Territory will become effective September 16, it is announced by John J. Fitzpatrick, Chairman, Traffic Executive Association-Eastern Railroads. Over some routes, the rate reductions amount to as much as 25 percent.

The new rates will apply on domestic, intercoastal and coastwise traffic, except within the Illinois Freight Association and the New England Territory. The new tariff provides two scales of rates, one applicable on a 36,000-pound minimum carload and the other on a 60,000-pound minimum carload. Further incentive for the use of palletized loads is provided by the elimination of charges for pallets used in shipments of 66,000 pounds in a single car.

Modified Standards for Suspension of Price Ceilings

OPS on August 29 announced supplemental standards for the suspension of price controls on manufactured goods selling materially below ceilings.

The modified suspension standards represent an extension of preliminary standards announced by OPS April 22 (see INFORMATION LETTER of April 26, page 159).

The modified standards make provision for special problems which are not involved in suspension of controls on primary commodities but which do arise in connection with manufactured goods.

The new standards for suspension were published as Price Operations

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CPR 75—Canned Soups

By terms of Amendment 2 to CPR 75, issued and effective September 3, canners of certain processed soups will no longer be allowed to recalculate their ceiling prices when their raw materials costs increase beyond 5 percent of the present ceiling.

The regulation will still allow processors to recalculate their ceilings in cases where they change the recipes of their soups and the resultant change in ingredient cost exceeds 5 percent. This provision stays unchanged. When ingredient costs drop 5 percent, recalculation is mandatory.

OPS said the action is in line with agency policy of continuing present ceiling prices on all foods subject to price control. In the Statement of Considerations, OPS said:

"In accordance with this policy, ceiling prices will not be increased except where, in accordance with the OPS announced industry earnings standard, an entire industry seeks an increase in its ceiling prices by making a satisfactory showing that its current earnings are less than 85 percent of its earnings in the best three years of the four years 1946-49. On the other hand, since it is also agency policy not to use the earnings standard as a standard for price rollbacks,

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Definition of Canning

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engaged in the first processing of, or in canning or packing, of perishable or seasonal fresh fruits or vegetables) and as used in Section 13(a)(10) (the "area of production" exemption for employees engaged in certain specified activities, including the canning of agricultural commodities for market). By implication, the definition of "canning" for purposes of the 7(c) exemption will be equally applicable to the term as employed in the fisheries exemption (Section 13(a)(5)) and in the 7(b)(3) 14-week limited hours exemption for seasonal industries.

The second paragraph of the interpretative statement is concerned with the application of the phrase "first processing" as contained in Section 7(c) of the Act to certain forms of food processing.

The third paragraph (Section 780.52) relates only to the shelling of dry corn used for animal feed or industrial purposes.

Following is the text of the interpretation, which was published in the *Federal Register* of August 30:

TITLE 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

Subchapter B—Statements of General Policy or Interpretation Not Directly Related to Regulations

PART 780—AGRICULTURE, PROCESSING OF AGRICULTURAL COMMODITIES, AND RELATED SUBJECTS

SUBPART A—GENERAL, AND PROCESSING AGRICULTURAL COMMODITIES

Pursuant to authority under the Fair Labor Standards Act of 1938, as amended, the present § 780.50 is hereby revoked and the following new sections, designated §§ 780.50, 780.51, and 780.52 are issued:

SUBPART A—GENERAL, AND PROCESSING AGRICULTURAL COMMODITIES

Sec.

780.50 Meaning of term "canning."

780.51 First processing under section 7 (c).

780.52 Shelling corn.

AUTHORITY: §§ 780.50 to 780.52 issued under 52 Stat. 1060, as amended; 29 U. S. C. 201-219.

§ 780.50 *Meaning of term "canning."* (a) As used in sections 7 (c) and 13 (a) (10) of the Fair Labor Standards Act (as in sections 13 (a) (5) and 13 (b) (4)), the term "canning" means hermetically sealing and sterilizing or pasteurizing and has reference to a process involving the performance of such operations. Other operations performed in connection therewith as integral parts of a single uninterrupted canning process are included, such as necessary preparatory operations performed on the products before they are placed in bottles, cans, or other containers to be hermetically sealed, as well as the actual placing of the commodities in such containers. Also included are subsequent operations such as the labeling of the cans or other containers and the placing of the sealed containers in cases or boxes whether such subsequent operations are performed as a part of an uninterrupted or interrupted process. The term "canning" does not include the placing of commodities or products in cans or other containers that are not hermetically sealed, nor hermetically sealing where no sterilization or pasteurization is performed, as such operations are "processing" as distinguished from "canning."

(b) This section replaces and supersedes the statement published in the *Federal Register* November 27, 1947, as § 780.50 of this part and as Release D-162, which is hereby rescinded and withdrawn. All prior interpretations of the meaning of the term "canning" as used in the Fair Labor Standards Act of 1938, as amended, contained in Interpretative Bulletin No. 14, in Release R-1892 dated January 25, 1943, and in any other releases, statements, rulings, or opinion letters issued by the Department of Labor are, to the extent that they are inconsistent or in conflict with paragraph (a) of this section, hereby rescinded and withdrawn.

§ 780.51 *First processing under section 7 (c)—(a) Introductory statement.* In the light of administrative experience and of certain relevant court decisions, the Secretary of Labor and the Administrator of the Wage and Hour and Public Contracts Divisions hereby set forth in this section a modification and clarification of certain interpretations published in Interpretative Bulletin No. 14, in Release R-1892, or in any other statements relating to the "first processing" exemptions provided in section 7 (c) of the Fair Labor Standards Act.

(b) *Perishable commodities—(1) Processing performed in a single place of employment.* An employer who commences processing operations on a perishable commodity to which the exemption in section 7 (c) for first processing applies, is considered engaged in the first processing of the named commodity throughout each series of operations, including by-product operations, which commence with such initial processing of the named commodity and are performed in the same place of employment as a continuous series of operations during which the commodities remain perishable.[1] Thus, where an employer "first processes" perishable or seasonal fresh fruits or vegetables and after a certain point in the operations the processing line divides so that different portions of the material being worked on may be processed into different products or byproducts, his employees who continue to process such different portions into the respective products or byproducts will be considered engaged in the first processing of the perishable or seasonal fresh fruits or vegetables: *Provided*, That all the operations take place in the same place of employment and are part of a continuous series of operations throughout which the commodities being worked on remain perishable. For example, where an apple processor starts with whole apples which he peels and cores, and continues to process the main portions on one production line and the peelings and cores on another to produce pomace, first processing includes not only the primary operations on the whole apples and the main portions but also the byproduct operations, provided each series of processing operations is performed in the same place of employment as a continuous series of operations commencing with the peeling and coring of the whole apples. Similarly, where a citrus fruit canner or processor makes cattle feed and molasses from citrus waste as a part of a continuous series of operations beginning with the fresh fruit, the section 7 (c) exemption applies where both the primary operations on the edible fruit and the cattle feed and molasses operations take place in the same place of employment. The applicability of the section 7 (c) exemption to such byproduct operations of a canner of perishable or seasonal fresh fruits or vegetables does not mean that operations performed on the "waste" portions after removal of the main portions of the fruit are exempt as part of "canning"; the basis of the exemption is that the byproduct operations, performed as a continuous series of operations commencing with separation of the portions of the whole fruit, constitute "first processing" of the fresh fruit within the meaning of section 7 (c). The fact that the initial processing operation on the whole fruit is also a part of the "canning" process performed on the main portions does not affect this result.

(2) *Processing performed in more than one place of employment.* Where first processing operations are performed at one place of employment on a commodity named in section 7 (c), and further processing operations on the processed commodity are then performed at another place of employment, such further processing operations are not part of the "first processing" of the named commodity which commenced at the first place of employment, but comprise a separate

[1] McComb v. C. H. Musselman & Co., 74 F. Supp. 185, affirmed 167 F. 2d 918; Sugar Creek Creamery Co. v. Walker, 187 S. W. 2d 178 (Sup. Ct. Ark.); Shain v. Armour & Co., 59 F. Supp. 907 (W. D. Ky.); Walling v. Bridgeman-Russell Co., 2 W. H. Cases 785 (D. Minn.).

process.[3] Thus, where a processor makes pomace from apple peels and cores in a place of employment other than the place where the processor starts with whole apples, or where the processor purchases apple peels and cores from others, the section 7 (c) exemption will not be applicable to his employees engaged in the operations on these peels and cores. Similarly, where citrus waste is processed in a place of employment other than the one where the fresh fruit is processed, or where citrus waste is purchased, the processing of the waste is not within the section 7 (c) exemption. However, such separate processing performed in a second place of employment, viewed separately, can be exempt "first processing" but only if the operations in the second place of employment are themselves "first processing" of a commodity named in section 7 (c). Illustrative of this principle is the situation where a processor is engaged in separating milk, a named commodity, into skimmed milk and cream in one place of employment and is engaged in making powdered milk from such skimmed milk, also a named commodity, in another place of employment. (See also subparagraph (3) of this paragraph.)

(3) *Edible portions of fresh fruits or vegetables.* The edible portions of fresh fruits or vegetables are considered to be fresh fruits or vegetables for purposes of section 7 (c), even though they have been subjected to an operation such as peeling, shelling, coring, or slicing so long as the whole fruit or vegetable or any severed parts thereof remain raw, perishable and recognizable in the common understanding as fresh fruits or vegetables. If a whole fresh fruit or vegetable has been thus processed in one establishment, the peeling, shelling, coring or slicing will be considered a "first processing" operation. If the peeled, shelled, cored or sliced portions of the fresh fruit or vegetable, which are raw, perishable and recognizable in the common understanding as fresh fruits or vegetables, are then shipped to another establishment, these edible portions will be considered to be "fresh fruits or vegetables" and may themselves be "first processed" in the second establishment. On the other hand, if peels, shells, or cores produced by the processing operations in the first establishment are shipped to another establishment, processing operations performed in the second establishment on these peels, shells and cores will not be considered first processing operations on "fresh fruits or vegetables" and will not be exempt under section 7 (c). (See subparagraph (2) of this paragraph.) Such byproduct operations, which are performed at a place of employment other than the one where the "first processing" of the fresh fruit or vegetable takes place, are not considered within the scope of the exemption.

For example, where peas are shelled (vined) or green beans are trimmed and cut into pieces in one establishment, and the raw peas or beans sent to another establishment for freezing, the exemption can apply to the freezing operations in the second establishment as well as to the operations in the first establishment.

(c) *Nonperishable commodities.* The principles stated in subparagraphs (1) and (2) of paragraph (b) will apply, with appropriate adaptation, to the first processing of other agricultural or horticultural commodities referred to in section 7 (c), regardless of whether they are perishable. This means that the "first processing" of such a commodity will include operations on either a main or a branch processing line, with respect to either a primary product or a by-product (up to the end point for exempt first processing of such commodity), provided such operations are part of a continuous series of operations starting with the initial processing operation on the named commodity and are all performed in the same place of employment.

(d) *Earlier interpretations superseded.* To the extent that prior general or specific interpretations contained in Interpretative Bulletin No. 14, in releases, in opinion letters, or in other statements issued with respect to the meaning and application of "first processing" under section 7 (c) of the Fair Labor Standards Act of 1938, as amended, are inconsistent with the principles above stated, they are rescinded and withdrawn.

§ 780.52 *Shelling corn.* (a) The shelling of corn constitutes "preparing in their raw or natural state" within the meaning of section 13 (a) (10) and not "first processing" within the meaning of section 7 (c).

(b) Shelled corn is an agricultural commodity for the purpose of section 13 (a) (10) and section 7 (c), no matter where it is shelled.

(c) The "corn" referred to in this section is corn such as is used for feed, seed, or industrial uses, the kernels of which are in the hard or dry state, as distinguished from corn harvested as a perishable fresh vegetable while the kernels are soft, to be prepared for human consumption as "corn on the cob" or as canned or frozen corn.

(d) All prior interpretations concerning the shelling of corn under the Fair Labor Standards Act of 1938, as amended, contained in Interpretative Bulletin No. 14, dated December 1940, and in any other releases, statements, rulings or opinion letters issued by the Department of Labor are, to the extent that they are inconsistent or in conflict with paragraphs (a), (b), and (c) of this section, hereby rescinded and withdrawn.

Signed at Washington, D. C., this 26th day of August, 1952.

F. GRANVILLE GRIMES, JR.,
Acting Administrator,
Wage and Hour Division.

[3] Walling v. Bridgeman-Russell Co., 2 W. H. Cases 785; Shain v. Armour & Co., 50 F. Supp. 207; Abram v. San Joaquin Cotton Oil Co., 46 F. Supp. 969. See also Sugar Creek Creamery Co. v. Walker, 187 S. W. 2d 178 (Ark. Sup. Ct.). Contra, McComb v. Hunt Foods, 167 F. 2d 905 (this opinion does not appear to be in accord with the general principles applicable to construction of exemptions under the Fair Labor Standards Act).

PERSONNEL

Martha Thackeray Retires; 34 Years Service at N.C.A.

Mrs. Martha Thackeray retired this week after 34 years of continuous service on the staff of the National Canners Association. During this time she has handled important duties in the Office of the Treasurer and has become well known to members at the N.C.A. Convention registration desk for 18 consecutive conventions, from the Atlantic City meeting of 1922 through the Chicago session of 1941.

Mrs. Thackeray came to N.C.A. with experience in the canning trade. As a high school girl she worked Saturdays, holidays, and school vacations in one of the early plants of the American Can Company, in her home town of Fairport, N. Y. After graduation from high school and Rochester Business Institute, she was employed in the office of the Cobb Preserving Company there. Her work attracted attention of the late George W. Cobb and Dr. H. A. Baker and was known also to the late Dr. Bigelow, director of the N.C.A. Laboratory, so that when secretarial help was needed in the Canned Foods Division of the U. S. Food Administration she transferred to Washington for a year in government service.

In January, 1919, Mrs. Thackeray joined the N.C.A. staff. Her aptitude for accounting resulted in her assignment to the Office of the Treasurer, where she began a long term of assistance to the late Louis M. Dashiell on membership dues records, payroll records, billing, compilation and advertising work on the annual *Canners Directory*, general correspondence, and Convention room reservation detail, continuing many of these same duties right up to her retirement this week.

President Heinz, Secretary Campbell, and a number of past N.C.A. presidents joined with the staff in tributes to Mrs. Thackeray at a joint observance of her birthday and retirement at N.C.A. headquarters Tuesday. She will spend her retirement at her Washington, D. C., home.

CPR 75—Canned Soups

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it has been determined that the recalculation provisions contained in CPR 75 should be revoked."

Following is the text of the amendatory provisions of Amendment 2 to CPR 75:

AMENDATORY PROVISIONS

Ceiling Price Regulation 75 is amended in the following respects:

1. Paragraph (g) of section 2 is revoked.

2. Paragraph (e) of section 3 is revoked.

3. Paragraph (b) of section 4 is amended to read as follows:

(b) *Recalculation of the uniform price line ceiling price.* If a change in ceiling price resulting from the recalculation of a new ceiling as required in section 2(i) of this regulation would result in a decrease of 5 percent or more in the ceiling price of any item included in the uniform price line, you shall then immediately recalculate your ceiling price for your uniform price line in accordance with paragraph (a) of this section.

You are not required to recalculate your ceiling price for the uniform price line if the change is an increase.

4. Paragraph (c) of section 7 is amended to read as follows:

(c) If you at any time recalculate your ceiling prices for an item under the provisions of section 2(i) of this regulation, you shall at that time refigure your weighted average ceiling price under this section.

Standards for Suspension

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Memorandum No. 48, which states, in part:

"*We will not suspend controls where such action would result in levels of prices or margins higher than permitted under applicable regulations.* More specifically, in connection with any suspension action, there must be a *finding made that prices are materially below ceiling*, and that there is *no prospect that reimposition of controls will be necessary in the foreseeable future.* Moreover, before any suspension action is taken, *an adequate price watching system* must be established, and a *determination made as to the conditions under which controls will be reimposed* and of the appropriate recontrol mechanism. It must be made clear at the time of suspension that *recontrol, when and if necessary, will not be at a higher level of ceiling prices* than that existing prior to suspension, except as required by law." (Italics supplied by OPS.)

Venezuelan Trade Agreement

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zuela agreed to reduce her tariff on canned baby foods and dietetic foods to one-third of the former rate. Exports of baby food fruits and vegetables to Venezuela in 1950 were valued at $400,000.

The State Department, in announcing the new agreement, said that "Venezuela grants new or improved concessions on $154 million of imports from the U. S.; on $12 million of imports they are withdrawing the 1939 concessions; and on $6 million of imports the new agreement provides for higher Venezuelan rates than in the 1939 agreement."

The State Department also estimated that the United States granted improved tariff and customs treatment on imports from Venezuela valued at $175 million—all on five petroleum and iron products.

The State Department also said:

"The agreement, as revised, covers 179 Venezuelan tariff items as compared with 88 in the 1939 agreement. It includes products of interest to practically every important group of United States exporters. The concessions by Venezuela have particular significance inasmuch as that country has no balance of payment difficulties in purchasing from the dollar area."

The new trade agreement will enter into force 30 days after exchange of a proclamation by the President and an instrument of ratification by the Government of Venezuela.

The trade agreement was negotiated under authority of the Trade Agreements Extension Act of 1951. Objective of the reciprocal trade program, which has been fostered by the United States since 1934, is to reduce tariff barriers and eliminate burdensome customs requirements so as to promote trade.

Following are the texts of the new Venezuelan tariff schedules, the new tariff rates, and partial explanations of the changes from the 1939 agreement:

3-C Sardines, canned ..... 1939 concession withdrawn

[N.C.A. NOTE: Under the 1939 agreement, the Venezuelan tariff on canned sardines is 0.28 bolivares per gross kilo. This concession was withdrawn. Canned sardines will be dutiable under the general rate of 2.00 bolivares per gross kilo.]

3-D Salmon, canned ..... 1939 concession withdrawn

[N.C.A. NOTE: Under the 1939 agreement, the Venezuelan tariff on canned salmon is 0.90 bolivares per gross kilo. This concession was withdrawn. Canned salmon will be dutiable under the general rate of 2.00 bolivares per gross kilo.]

3-F Shellfish, canned raised from 1.50 to 2.00

15-A Fruits, canned or bottled (except tropical fruits, pineapples and citrus fruits) in light syrups with 20% to 50% sucrose or dextrose ..... bound at 0.90

15-B Fruits, canned or bottled, in syrup (except tropical fruits, pineapples and citrus fruits) with more than 50% sucrose or dextrose ..... bound at 1.00
NOTE: The descriptions given for items 15-A and 15-B do not exclude those fruit mixtures in which tropical fruits, pineapples, and citrus fruits cannot be considered as the principal element in relation to the other ingredients.

[N.C.A. NOTE: This classification is revised. For the canned fruits excepted from the new classification, those in their own juice will be dutiable under the general rate of 1.20 bolivares and those in syrup will be dutiable under the general rate of 1.30 bolivares per gross kilo.]

36-C Preserves and preparations, canned or bottled: Podded vegetables, except kidney and black beans; asparagus, bean, lentil, celery and mushroom soups; sauces and relishes, except those made of tomatoes or those which contain tomatoes as the principal element in relation to the other ingredients; and the following vegetables: artichokes, sauerkraut, asparagus, Brussels sprouts and celery ..... bound at 0.80

[N.C.A. NOTE: This classification is revised. All vegetables, soups, sauces, and relishes not covered by the language of the new tariff classification will be dutiable under the general rate of 1.20 bolivares per gross kilo.]

37-A Special foods for children and those for dietetic use, which do not contain cacao ..... lowered from 0.30 to 0.10

37 Sterilized fruit juices and those frozen or concentrated (except those made from tropical fruits, pineapples and citrus fruits) ..... bound at 0.40

[N.C.A. NOTE: This classification is revised. Fruit juices comprising tropical fruits, pineapples, and citrus fruits will be dutiable under the general rate of 0.60 bolivares per gross kilo.]

The tariff rates are in terms of bolivares per gross kilogram. One bolivar is worth about 30 cents. Venezuela measures the full weight of a shipment, including cans and cartons.

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